

## **REMARKS**

### **I. INTRODUCTION**

Applicants thank the Examiner for the indication of allowable subject matter in claims 4-5, 9-10, 12, 16, and 20-21.<sup>1</sup> Applicants have amended claims 4-5, 9-10, 12, 16-17 and 20-22 and added new claims 23-25. Accordingly, claims 1-18 and 20-25 are presently pending in this application. Applicants respectfully requests reconsideration of the application in view of the foregoing amendments and the following arguments.

### **II. AMENDMENTS TO THE CLAIMS**

Applicants have amended claims 4-5, 9-10, 12, 16 and 20-21 to incorporate substantially all of the limitations found in the independent claims from which claims 4-5, 9-10, 12, 16 and 20-21 depend. Applicants have, however, remove the limitations “integral with” and “so as to form a unitary member” found in the independent base claims and inserted the limitation “connected to” where appropriate. Applicants respectfully submit that these amendments do not alter the scope of the claims as interpreted by the Examiner because the Examiner has given a broader definition to the term “integral” than intended by Applicants. Accordingly, Applicants submit that claims 4-5, 9-10, 12, 16 and 20-21 continue to recite allowable subject matter and that the present amendments do not add any new matter.

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<sup>1</sup> Applicants note that claim 17 is listed on the Office Action Summary as being rejected, but that no rejection has been applied in the Office Action. Given that claim 17 recites a limitation similar to allowable claims 5 and 10, Applicants presume that claim 17 recites allowable subject matter as well and that the Office Action Summary is incorrect. If Applicants’ presumption is incorrect, the Examiner is respectfully requested to issue another non-final office action to allow Applicants to address the patentability of claim 17.

Applicants have amended claim 22 to correct the dependency of claim 22 and provide for proper antecedent basis for the limitations set forth in claim 22. Applicants respectfully submit that the amendment does not add any new matter.

### **III. NEW CLAIMS 23-25**

New claims 23-25 depend from independent claims 1, 6 and 13, respectively, and recite that the “said first and second side members and said first and second cross members are integrally formed by casting” or that “said unitary member is formed by casting.” Support for claims 23-25 may be found at page 7, lines 27-29 of the application. Applicants respectfully submit that new claims 23-25 do not add any new matter.

### **IV. REJECTION OF CLAIM 22 UNDER 35 U.S.C. § 112**

Claim 22 stands rejected under 35 U.S.C. § 112, ¶ 2 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as their invention. In particular, claim 22 has been rejected as failing to provide antecedent basis for the term “said second end of said strut rod”. Applicants have amended claim 22 to change the dependency of claim 22 from claim 1 to claim 5. Applicants respectfully submit that all of the terms in claim 22, as amended, have proper antecedent basis and that the rejection has been overcome. Accordingly, Applicants request that the rejection be withdrawn.

**V. REJECTION OF CLAIMS 1-3, 6-8, 11, 13-15, AND 18 UNDER 35 U.S.C. § 102(B)**

Claims 1-3, 6-8, 11, 13-15 and 18 stand rejected under 35 U.S.C. § 102(b) as anticipated by Berckhan (U.S. Patent No. 3,243,007). Applicants respectfully submit that the rejection of claims 1-3, 6-8, 11, 13-15 and 18 under 35 U.S.C. § 102(b) is improper because Berckhan does not disclose or suggest all of the limitations recited in the claims. In re Paulsen, 30 F.3d 1475, 1478-79, 31 U.S.P.Q.2d 1671 (Fed. Cir. 1994); Verdegaal Bros. v. Union Oil Co. of California, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1997) (“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”).

Independent claims 1, 6 and 13 each recite “a subframe” including “first and second side members” and “first and second cross members, each of said first and second cross members integral with said first and second side members...” Independent claims 1, and 13 further recite “...so as to form a unitary member....” Applicants respectfully submit that Berckhan does not disclose or suggest a subframe meeting the recited limitations.

As set forth in previous replies, the term “integral” as used in the claims has a more limited meaning than the meaning given by the Examiner. The Examiner has asserted that the term “integral” as used in the claims encompasses structures having members united by fasteners or welds. Office Action of July 11, 2002, p. 11 and Office Action of June 19, 2003, p. 5. Applicants respectfully disagree. The claim language must be read in light of its use in the specification. The terms in a claim are generally given their ordinary and accustomed meaning to those of ordinary skill in the relevant art. However, when an applicant acts as its own lexicographer and clearly sets forth a

definition of a claim term different from the ordinary meaning of that term, the claim term must be construed in accordance with that definition. *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366-67 (Fed. Cir. 2002). Throughout the specification, Applicants are clear in using the word “integral” to refer to a one-piece or unitary member. For example, in the Summary of the Invention, Applicants state that “the first and second cross members are integral with the first and second side members such that the subframe is a unitary member”. Page 2, ¶ 0005; *see also* Page 7, ¶ 0027 (“Subframe 62 is unitary in constructions...”). Applicants further illustrate the contrast between the “integral” subframe as claimed and the prior art, stating :

A subframe 62 in accordance with the present invention represents a significant improvement as compared to conventional subframes used in heavy truck applications. *Because the side members 98, 100, cross members 102, 104, and mounting features on subframe 62 are all integral with one another, there are no bolts, welds, or other fasteners required to build subframe 62.* As a result, assembly time and cost is reduced.

Page 10, , ¶ 0032; *see also* page 2, ¶ 0006. Accordingly, the term “integral” as used in the claims has a defined meaning set forth in the specification wherein the first and second side members and first and second cross members are a one-piece or unitary member and does not encompass similar structures in which the side and/or cross members are connected using fasteners such as welds. New claims 23-25 further emphasize this difference by adding the limitation that the subframe is “formed by casting”—a process of manufacture that does not use fasteners such as welds.

Berckhan discloses a subframe 15 including two cross-members 23, 24 and two side members 29, 30. Notably, however, side members 29, 30 are coupled to cross members 23, 24 through “struts” 25, 26, 27, 28 which are welded to transverse members 23, 24. Column 3, lines 39-42. Berckhan, therefore, nowhere discloses or suggests the

integration of the side members and cross members into a unitary member as recited in the claims when the appropriate definition of “integral” is applied to the claims.

Because Berckhan does not teach or suggest all of the limitations recited in independent claims 1, 6 and 13, Applicants submit that the rejection of claims 1, 6 and 13 under 35 U.S.C. § 102(b) is improper and requests that the rejection be withdrawn. Further, because each of claims 2-3, 7-8, 11, 14-15, and 18 depend from one of the aforementioned independent claims, Applicants submit that the rejection of claims 2-3, 7-8, 11, 14-15, and 18 under 35 U.S.C. § 102(b) is also improper and request that the rejection be withdrawn.

#### **VI. REJECTION OF CLAIM 22 UNDER 35 U.S.C. § 103(A)**

Claim 22 stands rejected as being unpatentable over Berckhan (U.S. Patent No. 3,243,007) in view of Keeler et al. (U.S. Patent No. 6,527,286). Applicants have amended claim 22 to correct its dependency. Because claim 22 now depends from allowable claim 5, Applicants submit that claim 22 is also allowable and request that the rejection be withdrawn.


#### **VII. SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT**

Applicants have submitted a Supplemental Information Disclosure Statement contemporaneously with this Amendment along with copies of two Written Opinions and an International Preliminary Examination Report issued by the European Patent Office acting as the International Preliminary Examining Authority in a corresponding application under the Patent Cooperation Treaty. Consideration of the Supplemental Information Disclosure Statement is respectfully requested.

## VIII. CONCLUSION

Applicant respectfully requests entry of the above amendments prior to appeal on this matter. If the Examiner has any further questions or concerns, the Examiner is invited to contact the Applicant's undersigned attorney.

Respectfully submitted,



William F. Kolakowski III  
Registration No. 41908  
Customer No. 26,127  
DYKEMA GOSSETT PLLC  
39577 Woodward Ave., Ste. 300  
Bloomfield Hills, MI 48304  
(248) 203-0822  
Attorney for Applicant

BH01\423470.2  
ID\WFK